

ORIGINAL



0000059351

BEFORE THE ARIZONA CORPORATION C

RECEIVED

COMMISSIONERS

JEFF HATCH-MILLER – Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

2006 JUN 30 P 4: 53
AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

JUN 30 2006

DOCKETED BY

RB

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY, AN ARIZONA
CORPORATION, TO EXTEND ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY IN THE CITY OF CASA GRANDE
AND IN PINAL COUNTY, ARIZONA

DOCKET NO. W-01445A-06-0199

IN THE MATTER OF THE APPLICATION OF
PALO VERDE UTILITIES COMPANY FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY.

DOCKET NO. SW-03575A-05-0926

IN THE MATTER OF THE APPLICATION OF
SANTA CRUZ WATER COMPANY FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-03576A-05-0926

**REPLY IN SUPPORT OF MOTION
TO EXCLUDE PROPERTY OF CHI
CONSTRUCTION COMPANY
FROM ARIZONA WATER
COMPANY'S REQUESTED
EXTENSION AREA**

(ORAL ARGUMENT REQUESTED)

CHI Construction Company ("CHI") is the owner of a contiguous 7,000-acre tract of land in Pinal County which will be developed as a master planned community known as Legends. CHI has not requested water service from Arizona Water Company ("AWC"), nor have numerous other land owners which have been caught in the broad net cast by AWC in this docket. At the appropriate time in the development process, CHI will complete its strategy to provide utility services for Legends. This strategy will consider a variety of important factors such as (i) which provider can deliver the best service to the future residents of Legends; (ii) which provider has the ability to serve the complete Legends master planned development, as opposed to only portions of the development; (iii) which provider can work best with CHI in planning, permitting and constructing the necessary water and wastewater infrastructure to serve Legends; and (iv) which

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

1 provider can integrate the provision of water and wastewater services so as to maximize the
2 efficient use of water and effluent resources for Legends. Because CHI did not blindly acquiesce
3 to AWC's massive land grab in this extension docket, AWC labels CHI as "self serving." To the
4 complete contrary, CHI is discharging its duty as a prudent developer by addressing each of the
5 factors listed above in developing a thoughtful plan for the utility services that will be required at
6 Legends. The certification of a water provider for Legends is premature at this time, and CHI's
7 motion to exclude its property from AWC's requested extension area should be granted. Further,
8 CP should not be made to incur the additional legal expenses and costs of participating in this
9 docket where the company has not requested water service from AWC, and is not ready for water
10 service.

11 ARGUMENT

12 In this docket, AWC filed an extension request for a staggering 69,000 acres when it had
13 only five requests for service addressed to AWC totaling less than 200 acres. This is not a case
14 where the applicant is holding requests for service covering 90% of the requested extension area,
15 with a few "out parcels" opposing inclusion. Rather, AWC has requests for service covering less
16 than one-half of one percent of the requested extension area! Even if AWC includes the 52
17 requests for service that were directed to Santa Cruz Water Company—which cover some 19,373
18 acres—the combined requests for service still covered less than 30% of the requested extension
19 area.

20 AWC's extension request contravenes a well-established Commission policy of requiring
21 requests for service before extending a CC&N. *See* Decision 59396, Docket Nos. W-02074A-95-
22 0103 (Nov. 28, 1995) (limiting Beardsley Water Company's CC&N extension to only that area
23 where the company had requests for service); Decision 68607, Docket No. W-01445A-05-0469
24 (Mar. 23, 2006) (excluding Parcel 2 from AWC's extension area because the owner revoked his
25 request for service and AWC honored that request). The Commission's Assistant Director of the
26 Utilities Division had occasion to reiterate this policy just last fall in a case where AWC filed a
27 competing application against Woodruff Water Company (Consolidated Docket Nos. W-04264A-
28 04-0438, SW-04265A-04-0439, W-01445A-04-0755). Three days before the hearing in that case,

1 the Cardon Hiatt Companies ("Cardon") filed a letter with the Commission requesting that its
2 property of approximately 720 acres be excluded from AWC's CC&N extension. During the
3 hearing, Assistant Director Steve Olea testified that the Cardon property should be excluded in
4 the following exchange between the Mr. Olea and Administrative Law Judge Stern:

5 Q. [Judge Stern] ... So what is the status of Staff's recommendation to the
6 areas not requested – that haven't requested service apparently and which would
7 include Sandia... and then there is a number of small little sections and a couple
8 of other sections [sic] in which part of it is that Cardon property that didn't
9 request service apparently.

10 A. [Mr. Olea] Okay. Staff's opinion is that on sections 19 and 30, which I
11 think we are referring to as the Cardon areas, there is not a request for service.
12 Whether it's to Woodruff or to anybody, there is not a request.

13 And for a CC&N, Staff has always been in the opinion that there has to be a need
14 for service, and without a request, there is not a need, so there is no need to have
15 a certificate of convenience and necessity because the necessity portion isn't met.

16 *See Transcript Vol. VII* at 1415:3-18 (Aug. 4, 2005), Docket Nos. W-04264A-04-0438, SW-
17 04265A-04-0439, W-01445A-04-0755 (Decision 68453).

18 In the fact of these decisions, AWC argues that the policy requiring requests for service
19 does not actually exist. However, AWC does not (and cannot) distinguish the decisions cited
20 above—two of which involved AWC—from the case at hand. Nor does AWC explain why the
21 Commission should not follow those prior decisions in this case. The best that AWC could
22 muster was to state that CHI did not cite a rule, statute or case. *AWC Response* at p. 4, ln. 4.
23 Based on the Commission decisions cited above, CHI's motion to exclude its property from
24 AWC's requested extension area is fully consistent with past Commission practice, and should be
25 granted. AWC has agreed to such exclusions in prior cases.

26 AWC cites an old Illinois Supreme Court case for the notion that the property owner's
27 desires and unwillingness to obtain water service from an existing utility were not controlling as
28 to the public interest. *See AWC Response* at p. 3, lines 11-23 (citing *Citizens Valley View Co. v. Illinois Commerce Comm'n*, 28 Ill. 2d 294, 192 N.E.2d 392 (1963)). In *Citizens Valley*, the Illinois
Commerce Commission approved an application for a CC&N filed by a small developer-
controlled start-up water company to provide water service to an 800-acre parcel of land, denying

1 the competing application to serve of a larger, established water company. The Illinois Supreme
2 Court overturned the Illinois Commerce Commission's decision on the grounds that it was not
3 supported by substantial evidence, specifically with regard to the financial wherewithal of the
4 start-up water company. *Id.* at 303-304, 192 N.E. 2d at 398. However, AWC's reliance on this
5 case is misplaced. The *Citizens Valley* case addressed two competing applications for an area
6 where there was a demonstrated need for service, whereas in this case, there has been no request
7 for service for the CHI property. CHI is not arguing for one water provider over another, but that
8 it is premature to address any water provider for the property. Moreover, the *Citizens Valley* case
9 dealt with an 800-acre development, as compared to the approximately 7,000-acre master planned
10 Legends development.

11 We also note that the outcome of the *Citizens Valley* case turned on the fact that the start-
12 up water company failed to provide sufficient evidence to show the financial capability of the
13 company, since the only evidence on this point was the owner's own testimony that he and his
14 brother had the money to build the necessary facilities and furnish money to the new water
15 company. *Id.* There was no disclosure as to how the owners would supply the necessary money,
16 retire the debt, no interest taken into account, and no method of obtaining capital investment. *Id.*
17 The Court found that the Illinois Commerce Commission needed to have more evidence on these
18 issues and remanded the case back to the commission for these determinations. *Id.* Thus, the
19 case did not turn on the property owner's desires and unwillingness to obtain service from the
20 larger utility, but on the lack of demonstrated financial capability of the start-up water company.

21 Finally, the inclusion of the CHI property in AWC's extension area would create a major
22 problem for CHI because it would partition the Legends development between multiple water
23 providers, which would not be in the public interest. Legends includes a combination of: (i) land
24 which is currently un-certificated for water service; (ii) land within the water CC&N of CP Water
25 Company; and (iii) land within the water CC&N of Francisco Grande Utilities Company. CHI is
26 still developing its strategy for providing integrated water and wastewater service to Legends
27 through a single water provider and a single sewer provider. Once CHI has finalized its strategy,
28 CHI will then make a request for service to the appropriate providers. At that time, the

1 Commission will have an opportunity to consider the appropriate water provider for Legends. To
2 proceed with AWC's request at this time is premature.

3 For the foregoing reasons, CHI respectfully requests that the Commission grant its motion
4 to exclude its property from AWC's requested extension area. CHI should not be made to incur
5 the additional legal expenses and costs of participating in this docket where the company has not
6 requested water service from AWC, and is not ready for water service. CHI requests that oral
7 argument be scheduled on this motion at the earliest possible date.

8 DATED this 30th day of June, 2006.

9 SNELL & WILMER

10
11 

12 Jeffrey W. Crockett
13 Marcie Montgomery
14 One Arizona Center
15 400 East Van Buren
16 Phoenix, Arizona 85004-2202
17 Attorneys for CHI Construction Company

18 ORIGINAL and seventeen (17) copies
19 filed with Docket Control this 30th
20 day of June, 2006.

21 COPY of the foregoing hand-delivered
22 this 30th day of June, 2006, to:

23 Yvette B. Kinsey
24 Administrative Law Judge, Hearing Division
25 ARIZONA CORPORATION COMMISSION
26 1200 West Washington Street
27 Phoenix, Arizona 85007

28 Christopher C. Kempley
Chief Counsel, Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson
Director, Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

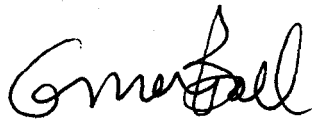
COPY of the foregoing sent via first class
mail this 30th day of June, 2006, to:

Steven A. Hirsch, Esq.
Rodney W. Ott, Esq.
BRYAN CAVE LLP
Two North Central Ave., Suite 2200
Phoenix, Arizona 85004-4406

Robert W. Geake
Vice President and General Counsel
ARIZONA WATER COMPANY
P.O. Box 29006
Phoenix, Arizona 85038

Michael W. Patten
ROSHKA, DeWULF & PATTEN
400 E. Van Buren St., Suite 800
Phoenix, Arizona 85004

Brad Clough
ANDERSON & BARNES 580, LLP
ANDERSON & MILLER 694, LLP
8501 N. Scottsdale Road, Suite 260
Scottsdale, Arizona 85253



1854350.2